

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-003-13-1-5-00169-16  
45-003-17-1-5-00772-18  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-07-14-177-014.000-003  
**Assessment Years:** 2013 and 2017

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Nowacki contested the 2013 and 2017 assessments of his property located at 7047 W. 24<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals issued determinations valuing the property at \$13,100 for 2013 and \$11,200 for 2017.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On October 29, 2018, Ellen Yuhan, our designated administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. Hearing Officer Robert W. Metz appeared for the Assessor. Both were sworn in and testified.

**Record**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit 1: GIS map  
Petitioner Exhibit 2: Property record card (“PRC”) for 2010-2014  
Petitioner Exhibit 3: PRC for 2015-2018
  - b. The record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

## **Burden of Proof**

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Ind. Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b), (d). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
6. Here, there was no change to the property's assessment between 2012 and 2013 or 2016 and 2017. Therefore, Nowacki bears the burden of proof for both years under appeal.

## **Summary of Contentions**

7. Nowacki's case:
  - a. Nowacki contends the property should be assessed at \$5,000. It is in the Airport Development Zone, which is a tax increment financing ("TIF") district. When a TIF district is established, there is a base assessed value. Ideally, the city establishes a TIF district to finance redevelopment, which in turn increases property values. That did not happen in the subject property's TIF district; property values actually decreased. But the record cards for properties from the district do not reflect the decrease because the Assessor is not interested in decreasing assessments in the district. To the contrary, the machinery of government is being used to misrepresent values. *Nowacki testimony; Pet'r Exs. 1-3.*
  - b. According to Nowacki, the front foot rate used to assess the subject property was excessive, and properties in another assessment neighborhood were assessed using a lower rate. The assessments for those properties actually decreased. Because the neighborhoods have identifiably similar characteristics, property values should be similar. The Assessor has not applied factors warranted by the market to correct the subject property's blatant over-assessment. *Nowacki testimony.*
8. The Assessor's case:
  - a. The Assessor contends that Nowacki failed to offer any substantial evidence to support the value he is seeking. Nowacki's own exhibit (a GIS map) shows that the subject property is located in a more developed area than the neighborhood he claims is comparable, which explains the difference in assessments. *Pet'r Ex. 1; Metz testimony.*
  - b. Nowacki testified that the subject property is contiguous to 7037 W. 24<sup>th</sup> Avenue, a property he separately appealed. But that property is the West ½ of Lot 6, while the

subject property is the West ½ of Lot 5. A different entity owns the East ½ of Lot 5, which is between the two. This shows Nowacki’s lack of familiarity with his own property. *Metz testimony*.

### Analysis

9. Nowacki failed to make a prima facie case for reducing the subject property’s 2013 and 2017 assessments. We reach this conclusion for the following reasons:
  - a. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
  - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013 and 2017, the valuation dates were March 1, 2013 and January 1, 2017, respectively. Ind. Code § 6-1.1-2-1.5(a).
  - c. Nowacki’s argument about how the government handles TIF districts is not for us to decide. Similarly, while he contends the property should be assessed at \$5,000, he failed to offer anything to show how he arrived at that value. Statements that are unsupported by probative evidence are conclusory and of no value to us in making our determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
  - d. Nowacki contends the subject property should be assessed using the same front foot rate as properties from a different assessment neighborhood. But he offered nothing to compare the neighborhoods or properties beyond conclusory statements that they were similar to each other. His evidence therefore fails to comply with generally accepted appraisal or assessment practices. *See Long*, 821 N.E.2d at 470; *see also*

*Indianapolis Racquet Club v. Marion Co. Assessor*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014).

- e. Because Nowacki offered no probative market-based evidence to demonstrate the subject property's correct market value-in-use, he failed to make a prima facie case for lowering his assessments. Where a petitioner has not supported his claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property's 2013 and 2017 assessments.

ISSUED: March 21, 2019

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

#### **- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.